

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 553/SRT/2024** (AY 2017-18)
(Physical court hearing)

Income Tax Officer, Ward-1(3)(1), Surat, Room No.203, income Tax Office, Anavil Building, Adajan, Surat-395 009	बनाम Vs	Dhiraj Sons Super Market, Surat C/o Dhiraj Sons Super Store, Samarth Sarathi Apartment, Parle, Point, Surat-395 007 [PAN : AAIFD 6720 A]
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren R. Vepari, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	11.12.2024
उद्घोषणा की तारीख/Date of pronouncement	10.03.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of National Faceless Appeal Centre, Delhi/Commissioner of Income tax (Appeals) [for short to as "NFAC/Ld.CIT(A)] dated 14.03.2024 for assessment year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 21.11.2017. The Revenue has raised the following grounds of appeal:-

1. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition of Rs.67,99,486/- made by the AO under section 69A of the Act by observing that the provision of section 69A of the Act is not applicable on the same as the assessee has recorded the investment in books of accounts without considering the facts that the assessee has not furnished the nature and source of its investments made during the course of assessment proceedings.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition of Rs.1,54,28,084/- made by the AO on account of suppression of gross profit by observing that the same was made by AO on estimation as well as assumption basis ignoring the fact that AO has rightly made the addition after analysing of valuation of closing stock after rejecting the books of account of the assessee u/s 145(3) of the Act.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in directing the AO to verify the addition made of Rs.52,60,990/- on account of mismatch found in the total amount of sales reported in audited report and the submissions made by assessee during the assessment proceedings, after considering the reconciliation statement submitted by the assessee during the appellate proceedings which has been not produced during the course of assessment proceedings by assessee.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in admitting the additional evidences, which were not produced before the AO during the course of the assessment proceedings, without appreciating the fact that the assessee has not satisfied the basic conditions laid down under Rule 46A(1) of the IT Rules, 1962.

5. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in taking decision that the AO has wrongly invoked section 145(3) of the Act in this case ignoring the fact that the assessee has not produced relevant books of account as called for vide questionnaire as well as show cause notice issued to the assessee.

2. Brief facts of the case are that assessee is a partnership firm namely "Dhiraj Sons Super market" engaged in the business of running of chain of departmental store. The assessee filed its return of income for assessment year 2017-18 declaring loss of Rs.1,83,220/-. The case was selected for complete scrutiny to examine the issue of "*reduction in profit because of application of income computation & disclosures standard*". During assessment, the Assessing Officer (AO), on perusal of details furnished and from audit report and balance sheet schedule in P&L account noted there was a difference of Rs.52,60,999/-, which is not explained by the assessee. The AO further noted that assessee as per submissions of assessee as per Annexure C, the has shown valuation of closing stock, sale price of its closing

stock and MRP at Rs.2.43 crore and sales price of closing stock at Rs.3.06 crore and MRP of closing stock at Rs.3.32 crore, the AO was of the view that assessee has earned gross profit at Rs.25.61% ($30639594 - 24392379 = \text{Rs.}62,47,215/-$), however, the assessee has shown gross profit @ 11.03%. Thus, there is difference of 14.58%, thereby reduced profit to evade tax. The AO worked out the figure of reduced profit of Rs.1.54 crore and proposed as to why books of account should not be rejected. The AO further noted that there is substantial increase in fixed asset. The assessee has not furnished any ledger, bills and not explained source of fund in fixed asset. The Assessing Officer was of the view that there was increased of Rs.67,99,486/- in the fixed asset. The AO issued show cause notice on all the above three issues in his show cause notice dated 11.12.2019 and asked assessee to make compliance by 16.12.2019. In para-4 of assessment order, the AO recorded that assessee furnished part-reply through e-assessment module without referring the contents of such reply. The AO recorded that as per sale register, assessee made credit sales of Rs.5.17 crore and cash sale of Rs.5.92 crore. Thus, total sales came to Rs.11.10 crore. But in audited trading account, assessee has shown total sale at Rs.10.58 crore. Thus, assessee has suppressed sales of Rs.52,60,999/-. The AO scanned details in his order and recorded that assessee has not furnished reply thereby a difference of actual sales shown by assessee in its return of income and in the audited report i.e., Rs.52,60,999/- was added to the income of assessee. The AO rejected the books of account and worked out figure of suppressed profit as per the show cause and added Rs.1.54 crore. While estimating such profit, the AO took his

view that assessee has not furnished any ledger, bills, nor explained the source of fund so that rise of fixed asset. The AO also held that there is substantial increase in the fixed asset during the year. And that in response to the show cause notice on such issue, the assessee has not furnished any ledger, bills and not explained source of funds. Hence, in absence of any reply, the AO also added Rs.67,99,486/- on account of unexplained investment in fixed asset. The AO passed assessment order under section 143(3) of the Act on 21.12.2019.

3. Aggrieved by the addition made in the assessment order, assessee filed appeal before Ld.CIT(A). Before Ld.CIT(A) assessee raised grounds of appeal for not allowing inadequate opportunity during assessment. The assessee also submitted that AO has not considered assessee's reply dated 19.12.2019, particularly when assessment order was passed on 21.12.2019. The assessee also raised grounds of appeal against various additions. Against inadequate opportunities, assessee submitted that only five days' time was allowed for making compliance of show cause notice, wherein hefty additions were proposed and e-compliance window was closed. The assessee submitted that their submission was not considered. The Ld. CIT(A) by considering such submission dismissed the contention of assessee by taking view that sufficient opportunity was allowed to the assessee. On the contention of the assessee that their reply dated 19.12.2019 was not considered, the Ld CIT(A) held that the assessee has not filed any proof delivery of speed post, through which reply dated 19.12.2019 was sent and that reply was sent beyond the time limit in the show cause notice.

4. Against addition on account of addition of Rs.52,60,999/- on account of difference in sales, the assessee stated that AO erred in making addition on account of difference in sales particularly, when assessee was not aware as to how the AO derived the figure of Rs.11.10 crore. The assessee in its letter dated 19.12.2019 requesting the Assessing Officer to provide the details of difference in sales arrived by him for their explanation. The AO, thereafter finalized assessment recklessly. The Ld.CIT(A) on considering the submission of assessee held that show cause notice issued by Assessing Officer contained the difference arrived by AO, the assessee filed its submission on 16.12.2019 and not asked for any clarification rather clarification was sought in letter dated 19.12.2018. The assessee has not provided any evidence in submitting such letter. The Ld.CIT(A), however further recorded that during appellate proceedings, assessee furnished reconsideration and explained the difference between sales shown in the audited financial statement and details provided during the course of assessment proceedings. The Ld. CIT(A) recorded the reconciliation on pages 20 to 25 of his order. The assessee also contended that difference was noted by AO by committing mistake in considering the entire cash received as "cash sales". Cash sales and the amount of cash received contained various entries which were not cash sales. The assessee submitted that sales reflected in the audited financial statements were exclusively of tax and tax being separately accounted in the books of account. The Ld.CIT(A) noted that reconsideration was not furnished during assessment proceedings which required verification by AO and directed AO to verify the reconciliation of sales to allow relief to the assessee. Thus, said

grounds of appeal was treated allowed subject to verification by Assessing Officer i.e., for "*statistical purposes*". On the rejection of books of account, the Ld. CIT(A) held that AO has not recorded his finding as to why books are found incorrect and thus Assessing Officer was not justified in rejecting the books of account.

5. On the estimation of gross profit and suppressed profit, assessee submitted that AO erred in making addition of Rs.1.54 crores to the gross profit of income only on the basis of closing stock statement submitted during assessment, which only indicates how the assessee would be putting references sales price in subsequent year against its closing inventory in current investment. The assumption was made in conjecture and surmise required to be deleted. The AO erred in extract and independent of sales in subsequent period to the current year without any evidence that assessee earned higher gross profit than the disclosed profit. The Ld. CIT(A) on considering the submission of assessee recorded that AO made addition by rejecting the books of account under section 145 of the Act. That Assessing Officer has committed arithmetic error in computing gross profit. The Ld.CIT(A) held that AO worked out the difference in gross profit on the basis of MIS report. The AO considered potential sales value of closing stock, which could be realized by assessee in a best scenario. It is evident that gross profit worked out by AO which was based on assumption sale rate which assessee hope to realise by selling closing stock in subsequent year. The AO assumed that potential sales are also realized on the sales made during the year. It was finally held that the AO has not brought on record any evidence to show that sales have been

understated by the assessee. The addition is based thoroughly on assumption basis, which is not justified thereby deleted the entire addition.

6. On the addition on account of unexplained expenditure in fixed asset, assessee stated that in response to show cause notice, assessee has explained that assessee did not own any immovable property, in any case with the fixed asset already shown in the audited balance-sheet. The assessee without prejudiced submission that section 69A of the Act is not applicable as the section deals with only those cases where amount is not recorded in the books of account. The Ld. CIT(A) on considering the submission of assessee noted that section 69A deals with the situation where a person is found to possess money, jewellery, or valuable items that are not accounted for in their books of account and they fail to provide a satisfactory explanation for the source of their possessions. In order to invoke section 69A, it is necessary that assessee is found to be owner of any money, bullion, jewellery or other valuable articles and the same is not recorded in the books of account maintained by the assessee. In this case, fixed asset are recorded in the books of account which is not disputed by AO. The AO called a detailed based on the schedule of fixed asset, forming part of the audited financial statements. Thus, necessary conditions of invoking section 69A is not satisfied in the facts of the present case of assessee. For invoking section 69A, Assessing Officer should first come to a finding that assessee has made investment and same are not recorded in the books of account and thereafter he can call for the assessee for an explanation about the nature and source of such investment. As fixed asset has been recorded in the books of account, hence, section 69A is not

applicable. On the basis of such observation, Ld.CIT(A) deleted the addition of unexplained investment. Aggrieved by the order of Ld.CIT(A), the revenue has filed present appeal before this Tribunal.

7. We have heard the submission of Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and Ld. Authorized Representative (Ld.AR) for the assessee and have gone through the orders of lower authorities carefully. Ground No.1 relates to addition made on account of unexplained investment in fixed asset. The Ld. Sr-DR for the Revenue supported the order of lower authorities. Ld. Sr-DR for the Revenue supported the order of Assessing Officer and submits that despite issuing show cause notice, assessee failed to furnish source of fund / investment in fixed asset. The Assessing Officer in absence of any explanation made such addition. The Ld.CIT(A) has simply accepted the explanation furnished by assessee before him.
8. On the other hand, Ld.AR of the assessee supported the order of Ld.CIT(A) and submits that Assessing Officer has wrongly selected section 69A for making addition. The assessee has already recorded investment in immovable property of Rs.67,99,486/- which is shown in the audited books of account and all such details were furnished before Ld.CIT(A). The assessee also furnished ledger account along with voucher to support the addition made in the immovable property. During assessment, Assessing Officer required the details of immovable property owned by assessee and not regarding investment in immovable property. The assessee already shown all details of audited books account and Ld.CIT(A) appreciated the fact and allowed relief to assessee.

9. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We find that AO made addition by taking view that there is substantial increased in the fixed asset during the year under consideration and that assessee has not produced any bills ledger account or other evidence to prove such source of funds. We find that Ld.CIT(A) deleted the addition by taking view that in order to invoke section 69A of the Act, that AO first come to satisfaction that assessee made investment and the same is not recorded in the books of account and then call for explanation about nature and source of fixed asset. The assessee has recorded fixed asset in its books of account. Thus, the provisions of section 69A is not applicable. We find that assessee has already shown fixed asset in the balance-sheet. Thus, provisions of section 69A is not applicable. Hence, we affirm the order of Ld.CIT(A). This ground No.1 of the appeal is dismissed.
10. Ground Nos.2 and 5 relate to addition of suppression of profit after rejecting books of account under section 145(3) of the Act. The Ld. Sr-DR for the revenue supported the order of AO. The Ld. Sr-DR submits that assessee has shown gross profit @ 11.03% only during the year under consideration. During assessment, assessee furnished a chart regarding working of profit on the basis of which, Assessing Officer noted that there is difference between MRP and the sale price, therefore, Assessing Officer in a scientific manner worked out the suppress percentage of sales and after rejecting the books of account estimated in gross profit of Rs.1.54 crore. The Ld.CIT(A) deleted the addition by accepting the submission of assessee.

11. On the other hand, Ld.AR of the assessee supported the order of Ld.CIT(A). The Ld.AR of the assessee submits that assessee has maintained complete set account, which is duly audited all information and evidence called for or furnished in compliance despite the fact that data was voluminous. The AO has not pointed out any specific defect in the books of account. Thus, rejection of books of account without any specific defect is not justified. On the addition of suppression of book profit, Ld.AR of the assessee submits that difference of gross profit (GP) worked out by AO, is based on MIS report, which were inadvertently furnished. The summary of closing stock, which compare closing stock at cost and management adopted forecast of potential sale value inclusive of indirect taxes specific to items lying in closing stock, which could be targeted to be realized in best case scenario in subsequent year. The stock registers have been accurately maintained and the valuation stock is perfectly in line with ICDS-II i.e., cost or Net Reliable Value (NRV) whichever is lower. The gross profit ratio estimated by AO inflated due to composition of items as well as fact that sales value in the chart is inclusive of indirect taxes. The audited financial statement of financial year 2017-18, the gross profit in subsequent year worked out to be only 12.39% on sales, demonstrating clearly how management forecasts, were not accurate and reliable basis for estimation of gross profit. The AO computed gross profit at 25.61% on closing stock at cost against gross profit ration in fast moving consumer goods (FMCG) around 11 to 13%. Thus, gross profit shown by assessee was in line with market.
12. We have considered the rival submission of both the parties and perused record carefully. We find that the AO made addition by rejecting books of account. No

specific defect was pointed out by the AO in the books of account. We find that the Id. CIT(A) while reversing the action of AO also noted that no specific defect is pointed out by AO before rejecting books of account. The Id. CIT(A) also held that in the course of assessment, the assessee furnished various ledgers, cash book, bank book, stock details and other details required by AO. No defect is pointed out in such details. Before us, the Id. Sr.DR of revenue also failed to bring any cogent fact to support the action of AO. We find that no comparable instances of GP ratio, if GP declared by assessee is on the lower side, was mentioned by AO. Thus, we affirm the order of Id. CIT(A) in reversing the action of AO. So far as estimation of additional GP is concerned, we find that AO estimated GP on the basis of his observation that as per details available before him there is difference in the GP offered by the assessee and the actual profit realised by assessee. The AO arrived at GP ratio of 25.61% why the GP declared by assessee was 11.03% hence, he worked out difference of 14.56%. By applying such difference, the AO worked out addition of Rs. 1.54 crore. As recorded above, before the Id. CIT(A), the assessee not only challenged the addition of GP but also pointed out that there is incorrect calculation on arithmetic basis as well as on documents relied and the realities of retail FMCG Sector. The assessee also explained that if AO performed proper arithmetic, he would have adjusted GP of 25.6% on cost to arrive a GP of 20.39% on sales. Thus, he could have estimated GP of 20.39% on sales as per proper arithmetic. We find that the Id. CIT(A) on considering the submission of assessee held that the AO worked out difference in GP on the basis of MIS report filed before him. The AO considered potential sale value of closing stock which could be realised

by assessee in best scenario. The AO worked out GP on assumption of sale rate which the assessee may be expecting (hope) to realise by selling the closing stock in subsequent year. AO assumed that potential sale is realised on the sale made during the year without bringing any evidence on record to show that sales has been understated by the assessee and deleted the addition. We find that once we have affirmed the order of Id. CIT(A) in reversing the action of rejection of books of account, therefore, there is no occasion to estimate the addition on GP basis. We find that no comparable instances is brought on record about the profit margin declared by assessee. Previous and subsequent years' result is not compared by AO. Thus, with our additional observation, we affirm the order of Id. CIT(A). In the result, ground No. 2 is also dismissed.

13. So far as ground No. 3 on account of addition is mismatch is concerned, we find that the Id. CIT(A) has given direction to the AO, thus we do not find any reason to interfere with the finding of Id. CIT(A).

14. Ground No. 4 relates to violation of Rule 46A. We find that no specific grievance was raised before us on this issue. Even otherwise, we find that there is violation of Rule 46A as one of the issue of addition of mismatch has already been restored to the AO. Thus, we do not find any merit in this ground of appeal. In the result, ground No. 4 of appeal is dismissed.

15. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10/03/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत